



Public Notice

U.S. Army Corps
of Engineers
Tulsa District

Reply To:

U.S. Army Corps of Engineers
ATTN: Regulatory Office
1645 South 101st East Avenue
Tulsa, OK 74128-4609

Proposed 2007
Nationwide Permits

October 13, 2006
Public Notice Date

November 27, 2006
Expiration Date

PURPOSE

The purpose of this public notice is to inform you of a change in law, regulation, or policy for which you might be interested.

SECTION 10

The U.S. Army Corps of Engineers is directed by Congress through Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate all work or structures in or affecting the course, condition, or capacity of navigable waters of the United States. The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

SECTION 404

The U.S. Army Corps of Engineers is directed by Congress through Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharges of dredged and fill material into all waters of the United States. These waters include lakes, rivers, streams, mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, and other natural ponds. The intent of the law is to protect these waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical, and biological integrity.

NOTICE TO PUBLISHERS

This public notice has been provided as a public service and may be reprinted at your discretion. However, any cost incurred as a result of reprinting or further distribution shall not be a basis for claim against the Government.

INITIAL PUBLIC NOTICE

NATIONWIDE PERMIT REISSUANCE REQUEST FOR COMMENTS

On September 26, 2006, the U.S. Army Corps of Engineers (Corps) published in the Federal Register its proposal to reissue its Nationwide permits (NWP).

The NWPs are general permits issued on a Nationwide basis to streamline the authorization of activities that result in minimal individual and cumulative adverse effects on the aquatic environment. Many of the proposed NWPs require notification to the District Engineer before commencing the work to ensure that the activities authorized by those NWPs have minimal individual and cumulative adverse impacts on the aquatic environment.

National Issues Concerning the Proposed NWPs: The Federal Register notice is the public's opportunity to comment on the proposed NWPs, general conditions, and definitions. Comments on National issues relating to these NWPs should be submitted to docket number COE-2006-0005 at www.regulations.gov. (The docket number can be searched for under the *Advance Search* tab) Instructions for submitting comments are provided in the September 26, 2006, Federal Register notice. Comments on the proposed NWPs are due by November 27, 2006.

Regional Issues Concerning the Proposed NWPs, Including Regional Conditioning: Division Engineers are authorized to add regional conditions specific to the needs and/or requirements of a particular region or State. Regional conditions are important mechanisms to ensure that impacts to the aquatic environment authorized by the NWPs are minimal, both individually and cumulatively. Division Engineers may also suspend or revoke specific NWPs in certain geographic areas (e.g., States or watersheds) or high-value aquatic systems where impacts authorized by those NWPs may be more than minimal. An enclosure for this public notice lists the proposed regional conditions currently under consideration by the Southwestern Division for Tulsa District in the States of Oklahoma and Texas. The Tulsa District, Corps is seeking comments on the proposed regional conditions and seeking comments on the need for additional regional conditions to help ensure that impacts authorized by the proposed NWPs are minimal. Unless otherwise noted, all proposed regional conditions listed on this enclosure are applicable for activities in the Tulsa District. Comments on regional issues relating to the proposed NWPs and regional conditions are to be sent to: U.S. Army Corps of Engineers, Tulsa District, Regulatory Office - CESWT-RO, 1645 South 101st East Avenue, Tulsa, OK 74128-4306, telephone 918-669-7400, FAX 918-669-4306, or email CESWT-RO@swt03.usace.army.mil Comments relating to regional conditions are due by November 27, 2006. Similar public notices proposing regional conditions in other regions or States are being published concurrently by other division or district offices.

In conjunction with the Federal Register notice, Corps districts will be announcing proposed regional conditions for these NWPs for public comment. The Tulsa District proposal is on the last page of this document. When the final NWPs are issued, the final regional conditions will be issued at the same time

so that the States and Tribes can make their Clean Water Act Section 401 water quality certification and Coastal Zone Management Act (CZMA) consistency determination decisions. The 401/CZMA decisions must be made within 60 days of the Federal Register notice announcing the issuance of the NWP. After that 60-day period, the NWP and the regional conditions will become effective.

Draft decision documents, which include environmental documentation required by the National Environmental Policy Act, have been prepared by Corps Headquarters. The decision documents will address compliance of the NWP with the requirements for issuance under general permit authority. These documents, as well as the proposed NWP, are available for viewing at U.S. Army Corps of Engineers, Tulsa District, Regulatory Office - CESWT-RO, 1645 South 101st East Avenue, Tulsa, OK 74128-4306 or on the Internet at the www.regulations.gov site (docket ID number COE-2006-0005). Final decision documents will be prepared for those NWP that are issued. In addition, supplemental decision documents will be issued by Division Engineers to address their determinations concerning regional conditions for the NWP.

Enclosed is an index of the proposed NWP and conditions. Anyone wishing to provide comments may obtain a full text copy of the NWP through www.regulations.gov (docket ID number COE-2006-0005), the Corps home page, or the Federal Register address listed below. If you are unable to access the web site, notify the Tulsa District Regulatory Office - CESWT-RO, 1645 South 101st East Avenue, Tulsa, OK 74128-4306 or telephone 918-669-7400 and a hard copy will be provided.

Internet addresses:

Copies of the Federal Register notice and the draft decision documents will also be available at <http://www.regulations.gov> in docket ID number COE-2006-0005.

The Corps home page is: <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/>. (Searched under the *Latest News* tab) As an alternate, internet users can access the Federal Register through the Government Printing Office (GPO) at <http://www.gpoaccess.gov/fr/index.html>.

Index of Proposed NWP, Conditions, and Definitions

Proposed NWP

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Associated Intake Structures
8. Oil and Gas Structures on the Outer Continental Shelf
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures

12. Utility Line Activities
13. Bank Stabilization
14. Linear Transportation Projects
15. U.S. Coast Guard Approved Bridges
16. Return Water From Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Oil Spill Cleanup
21. Surface Coal Mining Operations
22. Removal of Vessels
23. Approved Categorical Exclusions
24. Indian Tribe or State Administered Section 404 Programs
25. Structural Discharges
26. [Reserved]
27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities
28. Modifications of Existing Marinas
29. Residential Developments
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Facilities
32. Completed Enforcement Actions
33. Temporary Construction, Access, and Dewatering
34. Cranberry Production Activities
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation
38. Cleanup of Hazardous and Toxic Waste
39. Commercial and Institutional Developments
40. Agricultural Activities
41. Reshaping Existing Drainage Ditches
42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities
 - A. Emergency Repair Activities
 - B. Discharges into Ditches and Canals
 - C. Pipeline Safety Program Designated Time Sensitive Inspections and Repairs
 - D. Commercial Shellfish Aquaculture Activities
 - E. Coal Remining Activities
 - F. Underground Coal Mining Activities

Proposed NWP General Conditions

1. Navigation
2. Aquatic Life Movements

3. Spawning Areas
4. Migratory Bird Breeding Areas
5. Shellfish Beds
6. Suitable Material
7. Water Supply Intakes
8. Adverse Effects from Impoundments
9. Management of Water Flows
10. Fills Within 100-Year Floodplains
11. Equipment
12. Soil Erosion and Sediment Controls
13. Removal of Temporary Fills
14. Proper Maintenance
15. Wild and Scenic Rivers
16. Tribal Rights
17. Endangered Species
18. Historic Properties
19. Designated Critical Resource Waters
20. Mitigation
21. Water Quality
22. Coastal Zone Management
23. Regional and Case-by-Case Conditions
24. Use of Multiple Nationwide Permits
25. Transfer of Nationwide Permit Verifications
26. Compliance Certification
27. Pre-Construction Notification

Proposed Nationwide Permit Definitions

Best management practices (BMPs)	Pre-construction notification
Compensatory mitigation	Preservation
Currently serviceable	Reestablishment
Enhancement	Rehabilitation
Ephemeral stream	Restoration
Establishment (creation)	Riffle and pool complex
Independent utility	Riparian areas
Intermittent stream	Single and complete project
Loss of waters of the United States	Stormwater management
Non-tidal wetland	Stormwater management facilities
Open water	Stream bed
Perennial stream	Stream channelization
Practicable	Structure
Tidal wetland	Vegetated shallows
Waterbody	

Tulsa District NWP Regional Conditions

For all discharges and activities proposed for authorization under any NWPs into the Waters of the United States, including adjacent wetlands, listed below, applicants shall notify the Tulsa District Engineer in accordance with NWP General Condition (GC) 27. The Corps will coordinate a Pre-Construction Notification with the resource agencies as specified in NWP GC 27(d) without regard to the ½ acre impact threshold.

a. Wetlands, typically referred to as pitcher plant bogs, that are characterized by an organic surface soil layer and include vegetation such as pitcher plants (Sarracenia sp.), sundews (Drosera sp.), and sphagnum moss (Sphagnum sp.).

b. Baldcypress-Tupelo Swamps: Wetlands comprised predominantly of baldcypress trees (Taxodium distichum), and water tupelo trees (Nyssa aquatica), that are occasionally or regularly flooded by fresh water. Common associates include red maple (Acer rubrum), swamp privet (Forestiera acuminata), green ash (Fraxinus pennsylvanica) and water elm (Planera aquatica). Associated herbaceous species include lizard's tail (Saururus cernuus), water mermaid weed (Proserpinaca spp.), buttonbush (Cephalanthus occidentalis) and smartweed (Polygonum spp.). (Eyre, F. H. Forest Cover Types of the United States and Canada. 1980. Society of American Foresters, 5400 Grosvenor Lane, Washington, D.C. 20014. Library of Congress Catalog Card No. 80-54185)

c. Designated Critical Resource Waters (CRW) defined in NWP GC 19.

1. Outstanding Resource Waters (ORW) and their watersheds; and High Quality Waters (HQW) designated by the State of Oklahoma in Appendix A of the Water Quality Standards (OAC 785, Chapter 45) ORW include those waters in the supporting watershed, HQW do not. Both ORW and HQW include adjacent wetlands. The current list of CRW is available on the Corps website: <http://www.swt.usace.army.mil/permits/NPP.cfm>

2. Waters of the United States, including adjacent wetlands, designated as Critical Habitat for endangered species by the U.S. Fish and Wildlife Service. Current information on endangered species and their habitat is available from the USFWS webpage: <http://ifw2es.fws.gov/EndangeredSpecies/>

The latest information on endangered species in Oklahoma can be obtained from the USFWS webpage: <http://ifw2es.fws.gov/Oklahoma/spplist.htm>

The latest information on endangered species in Texas can be obtained from the USFWS webpage: <http://www.fws.gov/arlingontexas/documents.htm#TE>